IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.619 OF 2006
IN
SUIT NO.232 OF 1986

Music India Ltd. ...Plaintiff
vs.
Nasir Husain Films Pvt.Ltd. ...Defendant

Mr.Ajay Fernandis i/b Bilawalla & Co.for the Plaintiff
Mr.H.N.Thakore with Ms Jyoti Ghag i/b Thakore Jariwalla & Associates for the Defendant in support of chamber of summons

CORAM: A.S.OKA,J.
DATE : AUGUST 17,2007

P.C.:

1. I have herd the learned counsel for the defendants in support of the chamber summons. I have also heard the learned counsel for the plaintiffs who has opposed the chamber summons.

2. The prayer made in the chamber summons reads thus :

(a) That the Plaintiff be directed to produce for inspection to the Defendant all books of Account and/or the statement Account of the Plaintiff in respect of the Agreement dated 16th January 1984 signed between the Plaintiffs and Defendant which are set out in the schedule hereto.

3. The schedule of the chamber summons reads thus :

a) All books of Account, Statement of accounts of the

plaintiffs in respect of the transactions between the plaintiff and the Defendant under the Agreement dated 16th January 1984 for the period 16th January 1984 upto the date hereof and hereafter.

b) Details of all contracts entered into by the Plaintiff for various parties for exploitation of music in the feature film ‘Zamane Ko Dikhana Hai’.

4. With a view to appreciate the submissions made by the learned counsel for the parties, it will be necessary to briefly refer to the facts of the suit :

The plaintiffs have filed a suit for recovery of sum of Rs.5,46,126.22 as per the particulars claim set out in the plaint. According to the case of the plaintiffs, they are carrying on business of manufacturing and marketing gramophone and cassettes. The defendants approached the plaintiffs for financial assistance to the extent of 6 lacs to enable them to complete the production of their film entitled ‘Zamane Ko dikhana Hai’. According to the case of the plaintiffs a sum of Rs.6,00,000/- was advanced by the plaintiffs to the defendants. After negotiations between the parties, a further assistance of Rs.4,00,000/- was given by the plaintiffs to the defendants on the terms and conditions agreed by and between the parties. According to the case of the plaintiffs, terms and conditions agreed by and between them were reduced in the

form of an agreement dated 10th January 1981. The said agreement records that the defendants would assign to the plaintiffs exclusive rights to make records from the recording of songs and music embodied or that may be embodied in the said cinematograph film including the copyrights throughout India in records to be recorded from the songs and music embodied or to be embodied in the said cinematograph film. The agreement further provided that in consideration of transfer of the rights by the defendants in favour of the plaintiffs under the said agreement an all-in-royalty in respect of the records manufactured, sold and not returned and calculated by plaintiffs on domestic dealer price shall be paid by the plaintiffs to the defendants. Percentage all-in-royalty payable every year were also incorporated in the said agreement. The agreement further recorded that a sum of Rs.10,00,000/- was also advanced by the plaintiffs to the defendants It was stated that the advanced amount of Rs.10,00,000/- will be adjusted from and out of the amounts of royalty payable to the defendants by the plaintiffs. In the particulars of the claim set out in the plaint, the plaintiffs have given a credit for Rs.4,24,797.01 towards royalty earned for the period between July 1981 to June 1985. The suit was lodged on 6th December 1985.

5. A written statement has been filed by the defendants raising various contentions.

6. The learned counsel for the defendants submitted that the earlier Advocate for the plaintiffs had served unaffirmed copy of the affidavit of documents of the plaintiffs in which the plaintiffs were relying upon the relevant entries in the accounts maintained by them. It is pointed out that in the affidavit of documents dated 6th February 2006, the plaintiffs have not relied upon the said entries and have merely relied upon the statement of accounts and a copy of statement of accounts was produced in the compilation of original documents. He submitted that the statement of accounts produced by the plaintiffs is only till June 1985. He submitted that the plaintiffs are duty bound to give inspection of the books of accounts maintained by them. It is contended that the books of account will show the true and correct position of realisation of the amounts earned by the plaintiffs from the exploitation of the rights conferred on them by the suit agreement from June 1985 till date. The learned counsel for the plaintiffs submitted that a reliance cannot be placed on the unaffirmed copy of the affidavit of documents. He submitted that necessary statement of accounts is already annexed with the compilation of original documents produced by the plaintiffs. It is submitted that the present chamber summons is nothing but a delaying tactics. He also placed reliance upon the reply given to the notice to produce the documents by the plaintiffs.

7. I have considered the submissions. The plaintiffs have

relied upon the agreement dated 10th January 1981. The said agreement and especially clause 10 thereof provides that the amount of Rs.10,00,000/- advanced by the plaintiffs to the defendants would be adjusted from and out of the amount of royalty payable by the Plaintiffs to the Defendants in respect of sale of the records of the said motion picture. In clause 7 of the agreement, rates of the royalty have been fixed on the basis of the certain percentage of the yearly sales. Even going by the relevant clauses of the agreement relied upon by the plaintiffs, the defendants are entitled to adjustment of the advanced amount of Rs.10,00,000/- from the amount of royalty payable to the defendants. It is not case of the plaintiffs that the agreement did not operate after the institution of the suit. The adjustment of royalty depends upon the quantum of yearly sales.

8. It is not the case of the plaintiffs that they have not maintained accounts. In fact, in the unaffirmed affidavit of documents reliance was placed on the accounts maintained by the plaintiffs showing the yearly sales.

9. The defendants had served notice as required by Rule 16 read with Rule 15 of Order XI of the Code of Civil Procedure,1908 on the Advocate for the plaintiffs. Rule 15 deals with inspection of the documents referred to in the pleadings or in the affidavits. In paragraph 9 of the plaint, the plaintiffs have placed reliance on their books of accounts

maintained in regular course of business and in respect of the loan account of the Defendants and royalty account. The plaintiffs have maintained the account of the Defendant in their books of account. it is stated that the plaintiffs have given credit to the Royalty charges payable by them to the Defendants. Entries of Royalty in books of accounts of the Plaintiffs are certainly relevant considering the clauses in the agreement. Therefore, under Rule 15 of Order XI the defendants are entitled to seek inspection of the books of accounts maintained by the plaintiffs. In the schedule to the chamber summons the defendants have also sought inspection of the details of all contracts entered into by the plaintiffs for exploitation of music in feature film ‘Zamane Ko Dikhana Hai’. There is nothing on record to show that the plaintiffs have relied upon the contracts either in the plaint or in the affidavit of documents.

10. In the circumstances, the chamber summons deserves to be granted limited to the clause a) of the schedule to the chamber summons. In so far as clause a) of the schedule to the chamber summons is concerned, a case is made out for passing an order under Rule 18 of the Order XI of the said Code.

11. Hence, chamber summons is disposed of by directing the plaintiffs to give inspection of the documents referred to in clause (a) of the schedule to the chamber summons to the

defendants and to their Advocate on record within a period of eight weeks from today. There will be no order as to costs.

JUDGE